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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)

Low-Volume Long-Distance Users)

CC Docket No. 99-249

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

COMMENTS

BellSouth Corporation, on behalf of itself and its subsidiaries ("BellSouth"), hereby submits its comments on the Notice Of Inquiry ("Notice") released July 20, 1999 in the above referenced proceeding.¹

I. INTRODUCTION

1. The Telecommunications Act of 1996 (the "Act"), with its preference for full, fair and open competition in all telecommunications markets, has ushered in numerous regulatory changes, some required by the Act such as universal service and some, such as access charge reform, necessitated by the pressures of increased competition. The changed market environment no longer permits continuation of implicit subsidies or irrational rate structures—regardless of their origin or nature.

2. High cost subsidies for the support of universal service must, under the terms of the Act, be made explicit. The new approach to high cost universal service support as well as the introduction of a new fund to support services provided to education and healthcare has resulted

¹ *In the Matter of Low-Volume Long-Distance Users*, CC Docket No. 99-249, Notice of Inquiry, FCC 99-168, released July 20, 1999.

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in long distance carriers contributing directly to support these funds. In many cases, these carriers recover their contributions directly from their end users through flat-rated charges.

3. Access charges too have undergone substantial change. In particular, the Commission, in reforming access charges, has taken significant steps to eliminate recovery of non-traffic sensitive costs on a traffic sensitive basis by raising the cap on subscriber line charges and introducing a new flat-rated recovery element, the presubscribed interexchange carrier charge ("PICC"). Often, interexchange carriers pass on the PICC to their customers as an additional flat-rated monthly charge.

4. Another change taking place in the marketplace is a realignment of long distance carriers' rates. As part of this realignment some long distance carriers have established rate plans that include a fixed, monthly charge in addition to usage sensitive per minute charges. Although the two-part rate structure is relatively new to consumers, it has generally been the means by which reduced usage sensitive charges have found their way to the long distance marketplace, lowering the overall cost of long distance service to consumers.

5. The confluence of these changes, regulatory and market-based, has resulted in new flat-rated charges appearing on consumers' bills. The purported purpose of this inquiry is to evaluate the impact, if any, these charges have on low-volume long distance users and to determine whether these charges are appropriate.

6. At the outset, there is considerable doubt that there is a sufficient predicate for this inquiry. The telecommunications marketplace has changed and competition has created the need to abandon socially engineered rate structures in favor of those that are economically efficient. Further, there is nothing in the Notice that suggests any market change was extraordinary or

unanticipated. Before launching an inquiry regarding the appropriateness of the changes that have taken place, there should be at least some evidence that there has been an adverse consequence that substantially affects the public interest. The fact that there is change and that there are some consumers who do not like the change does not call such change into question or suggest that the public interest is threatened.

7. Further, the Notice fails to establish any basis for conducting a regulatory inquiry regarding low-volume consumers. There is no credible reason advanced in the Notice, nor does one exist, that low-volume users should be a protected class of users that require regulatory intervention on their behalf. The fact that more rational rate structures lead to higher charges for some users is neither surprising nor detrimental to the public interest. Competition simply does not permit regulatory policies that require high-volume users to subsidize low-volume users.

8. Competition, not regulation, is the surest way to advance the interests of all consumers. The Commission should be very hesitant to take any step that re-introduces rate regulation into the interexchange marketplace. Regulatory interference at this time could disrupt the natural operation of the market, increase the cost of telecommunications for consumers, and slow the advances of telecommunications that competition has engendered.

II. THERE IS NO NEED FOR THE COMMISSION TO PROMULGATE NEW REGULATIONS TO PROTECT LOW-VOLUME TOLL USERS

9. The Commission opens its inquiry with the question of whether flat-rate charges that are imposed on low-volume toll users are appropriate.² This question, however, misses the point.

² Notice ¶ 13.

Low-volume users are not captive customers nor are they victims of some kind of baseless pricing behavior by the long distance carriers as seems to be implied in the Notice.

10. Low-volume users, as have every other consumer, have a variety of choices they can make with regard to purchasing long distance services. The range of alternatives available enable the low-volume user to decide how much he will spend on long distance services and whether or not his long distance charges will primarily be usage based or a combination of flat-rate and usage based charges.

11. For example, one of the flat-rate charges over which the Notice expresses concern is a monthly fee assessed by some long distance carriers irrespective of whether a customer makes any long distance calls.³ The Commission need not concern itself with reasons for such charges because low-volume users can avoid them altogether. The only action necessary for the low-volume user to avoid such a charge is to discontinue presubscribing to an interexchange carrier.⁴ When the low-volume user wants to make a long distance call, the user need only choose among the numerous dial-around services that are available. Making economic choices that maximize his utility is the ultimate control that a customer has over his long distance telecommunications bill.

12. Further, the long distance alternatives that are available are not obscure, hidden pricing plans, known only to a savvy few. To the contrary, dial-around plans are well advertised. They offer consumers a variety of rate plans that enable consumers to select an offering that

³ Notice ¶ 12.

⁴ The end user then can have the precise charge that is billed to the interexchange carrier by a local exchange carrier billed to him by not presubscribing to any interexchange carrier.

provides the lowest price for the type of call they intend to make, *e.g., long call, short call, international call*. The proliferation of dial-around services alone attests to their market acceptance.

13. At the end of 1998, the Yankee Group issued a report on consumer spending on communications services.⁵ For long distance spending, the report estimated that at least eighteen percent of the households in the United States used dial-around services at least once during the year and that dial-around services accounted for approximately 5 percent of overall long-distance spending in July 1998. With respect to the future of dial-around services, the report concludes that “[t]here appears to be no immediate cessation of the activities in the dial-around arena. For the foreseeable future, the Yankee Group expects that dial-around as a category will increase, and providers will fight for the loyalty of those customers that have demonstrated a willingness to dial-around.”⁶

14. There can be no debate that alternatives exist that permit consumers to avoid fixed fees for long distance service. All that is necessary is for the consumers to investigate the offerings and choose the service that best satisfies their long distance calling requirements. No basis exists to relieve consumers of the obligation to exercise the same diligence in making long distance purchases that they do for purchasing cars, insurance, homes, groceries, clothes, airline tickets and virtually every other consumer good or service.

⁵ The Yankee Group, Consumer Communications, *Understanding Consumer Spending on Communications*, Report Vol. 15, No. 23, December 1998 (“Yankee Group”).

⁶ Yankee Group at 4.

15. It is plainly evident that the market has responded to consumer needs without regulatory interference. In fact, the market is functioning as expected because there has been no regulatory interference. No record could support a determination that regulatory intervention is warranted. Regulatory action, direct or indirect, would be inconsistent with the competitive goals embodied in the Act and likely would be counter-productive.

16. The advent of flat rate charges in long distance rate structures reflect, in part, the dismantling of implicit subsidies that were created as a result of regulatory engineering. Despite the Commission's commitment not to abandon reforms that are eliminating economically irrational access charge rate structures,⁷ the Commission appears, in the instant proceeding, to be considering the introduction, by way of regulation, of economically irrational rate structures in the long distance market.

17. The lessons of access reform counsel against an interventionist path in the long distance market. Regulatory interference with the workings of the marketplace results in carriers reacting to regulation rather than responding to the market. Competition, with its attendant benefits of consumer choice and efficient pricing, suffers. Further, the process of undoing regulatory actions and subsidies, as access reform and universal service illustrate, can be arduous.

18. Typical of the regulatory missteps that could be taken are the rate actions the Commission is considering that long-distance providers be required to undertake.⁸ The

⁷ Notice ¶ 13.

⁸ Notice ¶ 21. The rate actions considered by the Commission are: (1) requiring a rate plan that excludes a minimum monthly usage charge; (2) pass through of a specific portion of interstate switched access charge reductions to a basic rate plan; and (3) pass through of the

Commission's inquiry appears to be based on confusing low-volume users with low-income users for which the Act makes special provision. Low-volume long distance users, however, do not present the Commission with a question of universal service.

19. The Commission, in conjunction with the Joint Board, is in the process of implementing new universal service measures. The universal service proceeding is the place for the Commission to implement steps that insure affordable access to the telecommunications network. As Commissioner Powell stated, "by no means does low-volume necessarily correlate with these groupings for which the government often accepts some social responsibility."⁹

20. The Commission should abandon ideas of re-regulating long distance telecommunications, even minimally, and continue forward with measures that will eliminate regulatory distortions. For example, the recent Coalition for Affordable Local and Long Distance Service ("CALLS") proposal¹⁰ presents a pragmatic solution that rationalizes the access charge rate structure, leads to reductions in traffic sensitive access charges, and provides for specific universal service measures to ease the transition toward an economically sound end user cost recovery system. The CALLS proposal not only corrects for regulatory imbalances in the current access charge system but it also reduces long distance carriers costs which in turn should spawn new rate plans for consumers.

PICC as a percentage of the bill capped a particular dollar level. Along with these rate actions, the Commission also suggests further consumer education by way of bill inserts.

⁹ Separate Statement of Commissioner Powell, attached to the *Notice*, dated July 20, 1999.

¹⁰ See, Letter from Harris Wiltshire & Grannis on behalf of the Coalition for Affordable Local and Long Distance Service, to the Honorable Kennard, Ness, Furchtgott-Roth, Powell and Tristani, regarding Universal Service and Access Reform Proposal, CC Docket Nos. 96-45, 96-262, 94-1 and 99-249, filed July 29, 1999.

21. Like the CALLS proposal, the eventual addition of Bell Operating Companies as long distance competitors will benefit consumers. Such benefits could be forestalled, however, if the Commission were to impose new regulatory conditions regarding low-volume users.¹¹

22. The time has long passed for regulatory engineering of the telecommunications marketplace. Congress, in enacting the Telecommunications Act of 1996, has expressed its preference for competition and deregulation. The questions raised in the present inquiry are, as Commissioner Furtchgott-Roth expressed, “vestiges of cost-based regulation”¹² and have no place in the competitive framework that is now embodied in the Communications Act. For the

¹¹ The Notice appears to believe that some of the fixed billing and account maintenance costs that long distance providers experience in serving low-volume users would be avoided when BOCs enter the long distance market. When the BOCs are permitted to enter the long distance market, they will do so through separate subsidiaries. Accordingly, the BOC long distance affiliate will incur fixed billing and account maintenance costs. BOC entry, however, will bring competitive pressures on long distance providers to be efficient and to reduce costs. Consumers ultimately benefit from these types of competitive pressures and, hence, the Commission should avoid regulatory actions that interfere with the competitive process.

¹² Separate Statement of Commissioner Furtchgott-Roth, *Notice*, dated July 20, 1999.

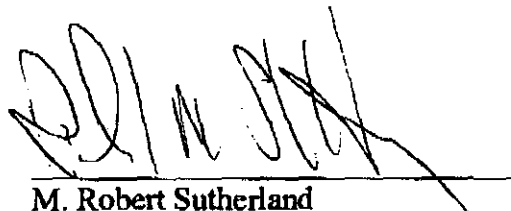
reasons discussed above, the public interest would be disserved by continuing this inquiry.

Accordingly, the Commission should terminate this proceeding.

Respectfully submitted,

BELLSOUTH CORPORATION

By:

A handwritten signature in dark ink, appearing to read 'M. Robert Sutherland', is written over a horizontal line.

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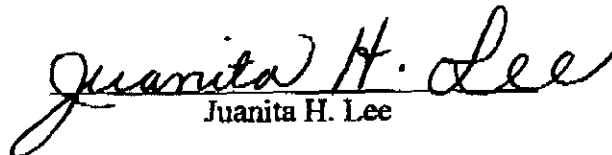
Date: September 22, 1999

CERTIFICATE OF SERVICE

I do hereby certify that I have this 22nd day of September 1999 served the following parties to this action with a copy of the foregoing COMMENTS by hand delivery or by placing a true and correct copy of the same in the United States Mail, postage prepaid, addressed to the parties listed below.

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